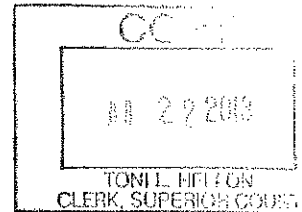


EXHIBIT A

1 WEEKS LAW FIRM PLLC
2 2223 E. Speedway Blvd.
3 Tucson, AZ 85719
4 Tel 520-318-1209
5 Fax 520-327-3118
6 weeks@weekslegal.com
7 Stephen M. Weeks, SBN 020726 PC 65471



8 Attorneys for Plaintiff

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF PIMA**

11 Enrique Montijo, an individual,
12 Plaintiff,

CASE NO.

C20134044

13 vs.

14 DIRECTOR Charles Ryan; John and
15 Jane Does 1-20, in their individual and
16 official capacities; ABC companies 1-
17 10,

COMPLAINT
(Civil Rights, Gross Negligence)

JURY TRIAL DEMANDED

18 Defendants.

HON.

Christopher P. Starling

19
20
21 Plaintiff Enrique Montijo, by and through undersigned counsel, hereby
22 alleges the following upon information and belief:
23

24 **PARTIES & JURISDICTION**

25 1. Plaintiff Enrique Montijo is a resident of Pima County, Arizona currently
26 incarcerated in Florence, Arizona.

EXHIBIT A

- 1 2. In July 2012, Plaintiff was an inmate under the care, custody, and control of
2 the Arizona Department of Corrections (hereinafter "ADC").
3
- 4 3. All Defendants were administrators, employees or contractors of the Arizona
5 Department of Corrections at the time of the events complained of herein, and, on
6 information and belief, all reside in Arizona.
7
- 8 4. Defendant Ryan is the Director of ADC, and as such has authority to set
9 policy and procedure for all ADC inmates, employees, and contractors.
10
- 11 5. This Court has jurisdiction over the subject matter of this Complaint pursuant
12 to Article 6 of the Arizona Constitution and Arizona Revised Statute § 12-123.
13
- 14 6. All jurisdictional requirements have been met.

15 STATEMENT OF FACTS

- 16 7. On or about Friday, July 20, 2012, Plaintiff consumed food that was shared
17 among four inmates: Plaintiff, Thomas Granillo, Hector Lopez, and Robert
18 Aceves.
19
- 20 8. The Arizona Department of Corrections (hereinafter "ADC") provided the
21 botulism contaminated food.
22
- 23 9. All food consumed by Arizona inmates housed in state prisons is provided
24 by ADC.
- 25 10. Food that was contaminated with botulism was given to Plaintiff and other
26 prisoners by ADC.

1 11. Plaintiff and three other inmates who consumed the food began to feel ill
2 over the weekend of July 21 & 22, 2012.

3
4 12. Plaintiff began experiencing symptoms on or about July 25, 2012 and
5 reported it.

6
7 13. Defendants failed to provide timely medical care, refusing to provide it
8 unless one or more of the sickened inmates agreed to claim that they had
9 consumed "hooch".

10
11 14. From July 25 until July 29, 2012, Plaintiff complained to various ADC staff
12 that he needed to go to the hospital and stated that it was an emergency.

13
14 15. Between July 25 and August 2, 2012, Plaintiff's condition deteriorated, and
15 included: general weakness, increasing difficulty breathing, chewing,
16 swallowing, eating, walking, writing, and speaking.

17
18 16. On information and belief, Plaintiff was denied access to a licensed
19 physician until immediately before he was taken to the hospital.

20
21 17. Between approximately July 25 - August 2, 2012, various correctional
22 officers escorted Plaintiff to the medical unit and back to his cell without
23 treatment.

24
25 18. On or about August 2, 2012, Plaintiff was again taken to medical and was
26 seen by unknown medical staff.

19. On August 2, 2012, Plaintiff was taken to the hospital where he remained for

1 20. Plaintiff incorporates all previous paragraphs herein by reference.

2 21. Plaintiff asserts that Defendants, one or more, had a duty to ensure that the
3 food given to ADC inmates is safe to eat.
4

5 22. ADC's food was unsafe to eat and contaminated with botulism toxin.

6 23. All food consumed by ADC inmates is provided by ADC.
7

8 24. Therefore, Plaintiff asserts that under the doctrine of *res ipsa loquitur*, ADC
9 must have breached its duty.

10 25. Plaintiff states that he was injured by contracting botulism poisoning.
11

12 26. Plaintiff states that this breach was the actual and proximate cause of his
13 injuries.

14 27. Defendants were grossly negligent in failing to provide timely treatment for
15 the serious condition.
16

17 WHEREFORE, Plaintiff prays for relief as follows
18

- 19 1. For actual damages, in an amount to be determined at trial,
- 20 2. For compensatory damages, in an amount to be determined at trial,
- 21 3. For punitive damages, in an amount to be determined at trial,
- 22 4. For attorney's fees and costs, and
- 23 5. Awarding such other and further relief as the Court deems just and
24 proper under the circumstances.
25
26

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26

DATED this 22nd day of July, 2013.

WEEKS LAW FIRM PLLC



Stephen M. Weeks, Esq.
Attorneys for Plaintiff

EXHIBIT B

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2 2223 E. Speedway Blvd.
3 Tucson, AZ 85719
4 Tel 520-318-1209
5 Fax 520-327-3118
6 weeks@weekslegal.com
7 Stephen M. Weeks, SBN 020726 PC 65471

8 Attorneys for Plaintiff

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF PIMA**

11 Enrique Montijo, an individual,
12 Plaintiff,

13 vs.

14 DIRECTOR Charles Ryan; Unknown
15 Zeravica, Sgt. Robinson, Unknown
16 Sanchez, Unknown Suarez, Unknown
17 Swaney, Unknowns Williams,
18 Unknown Bennett, Unknown Salas,
19 Unknown Haynes, Unknown French,
20 Caron Grant, Unknown Pinson, John
and Jane Does 1-20, in their individual
and official capacities; ABC
companies 1-10,

21 Defendants.

CASE NO. C20134044

FIRST AMENDED COMPLAINT
(Civil Rights, Gross Negligence)

JURY TRIAL DEMANDED

HON. Christopher Staring

22 Plaintiff Enrique Montijo, by and through undersigned counsel, hereby
23 alleges the following upon information and belief:

24 **PARTIES & JURISDICTION**

- 25 1. Plaintiff Enrique Montijo is a resident of Pima County, Arizona currently
26 incarcerated in Florence, Arizona.

EXHIBIT B

- 1 2. In July 2012, Plaintiff was an inmate under the care, custody, and control of
2 the Arizona Department of Corrections (hereinafter "ADC").
3
- 4 3. All Defendants were administrators, employees or contractors of the Arizona
5 Department of Corrections at the time of the events complained of herein,
6 and, on information and belief, all reside in Arizona.
7
- 8 4. Defendant Ryan is the Director of ADC, and as such has authority to set
9 policy and procedure for all ADC inmates, employees, and contractors.
10
- 11 5. This Court has jurisdiction over the subject matter of this Complaint pursuant
12 to Article 6 of the Arizona Constitution and Arizona Revised Statute § 12-
13 123.
14
- 15 6. All jurisdictional requirements have been met.

16 STATEMENT OF FACTS

- 17 7. On or about Friday, July 20, 2012, Plaintiff consumed food that was shared
18 among four inmates: Plaintiff, Thomas Granillo, Hector Lopez, and Robert
19 Aceves.
20
- 21 8. The Arizona Department of Corrections (hereinafter "ADC") provided the
22 botulism contaminated food.
23
- 24 9. All food consumed by Arizona inmates housed in state prisons is provided
25 by ADC.
26
10. Food that was contaminated with botulism was given to Plaintiff and other

1 prisoners by ADC.

2 11. Plaintiff and three other inmates who consumed the food began to feel ill
3 over the weekend of July 21 & 22, 2012.

4
5 12. Plaintiff began experiencing symptoms on or about July 25, 2012 and
6 reported it.

7
8 13. Defendants Williams, Robinson, Zeravica, Unknown Salas, Unknown Gold,
9 and Jane & John Does 2-5, failed to provide timely medical care, refusing to
10 provide it unless one or more of the sickened inmates agreed to claim that
11 they had consumed contraband, including home-made alcohol known as
12 "hooch".
13

14 14. From July 25 until July 29, 2012, Plaintiff complained to various ADC staff
15 that he needed to go to the hospital and stated that it was an emergency,
16 including Unknown French.
17

18 15. Between July 25 and August 2, 2012, Plaintiff's condition deteriorated, and
19 included: general weakness, increasing difficulty breathing, chewing,
20 swallowing, eating, walking, writing, and speaking.
21

22 16. On July 25, 2012, the Incident Command System (hereinafter "ICS") was
23 activated, indicating a serious threat to health or property, and Plaintiff was
24 taken to the medical unit inside the prison. At the medical unit, Defendant
25 Zeravica neglected the duty to ensure Plaintiff received adequate medical
26

1 care.

2 17. The ADC staff at the medical unit, including Sgt. Robinson, accused Plaintiff
3 of ingesting illegal drugs, and refused treatment unless Plaintiff admitted to
4 taking drugs.

5
6 18. Plaintiff volunteered a urine sample, which was taken and returned a
7 negative result for all substances tested for.

8
9 19. Unknown Haynes ordered a liquid diet for Plaintiff, stating, "that's all I can
10 do for you."

11
12 20. On or about July 25, 2012, on information and belief, Mr. Granillo was taken to
13 the hospital where it was discovered that he was suffering from botulism
14 poisoning. On information and belief, Mr. Granillo was placed in intensive care
15 where his heart stopped beating on two separate occasions.

16
17 21. On July 29, 2012, Plaintiff submitted a Heath Needs Request (hereinafter
18 "HNR") complaining of fatigue, dizziness, vomiting, blurry vision, slurred
19 speech, and difficulty chewing and swallowing. Defendant Mainbridge, RN
20 signed the HNR and responded that Plaintiff was resolved because Plaintiff
21 had been sent to the hospital on 7/30/12. Plaintiff was not taken to the
22 hospital until 8/2/12.

23
24
25 22. On July 29, 2012, another ICS was activated by the pod officer John Doe 1.
26 On that day, Mr. Lopez, Plaintiff's cell mate, was taken out to the medical

1 unit. Mr. Doe 1 promised to return for Plaintiff, but never did.

2
3 23. On July 30, 2012, Defendant CO Sanchez came to Plaintiff's cell and
4 immediately asked Plaintiff what was wrong. Plaintiff explained to the best
5 of his ability while suffering from gradual paralysis from the botulism
6 poisoning. Defendant Sanchez said she would get help, but never returned.

7
8 24. On July 30, 2012, Defendant Suarez came to Plaintiff's cell and Plaintiff
9 asked to be seen by medical. Defendant Suarez left and returned, saying that
10 medical had already seen Plaintiff, and Plaintiff had received treatment.

11
12 25. On July 31, 2012, Plaintiff submitted another HNR, complaining of difficulty
13 breathing, drinking, and eating.

14
15 26. On July 31, 2012, Plaintiff informed Defendant Vangundy that he was sick,
16 Vangundy saw him choking, and called for medical staff. Defendant
17 Vangundy failed to obtain adequate medical care for Plaintiff at that time.

18
19 27. Plaintiff was seen by Defendant CO Williams, who insisted that Plaintiff
20 admit to using drugs as a condition of being treated.

21
22 28. Plaintiff lied to Williams and said that he drank hooch, hoping to get
23 treatment.

24
25 29. Plaintiff was seen by Defendant CO Bennett, who said he would try to get
26 help for Plaintiff, and later reported that "nobody wanted to help [Plaintiff]".

30. Defendant Sgt. Swaney also told Plaintiff that medical did not want to help

1 Plaintiff, and denied Plaintiff's request to speak to someone with greater
2 authority.

3
4 31. Other inmates repeatedly shouted and asked correctional officers to help
5 Plaintiff.

6
7 32. On information and belief, Plaintiff was denied access to a licensed physician
8 until immediately before he was taken to the hospital.

9
10 33. Between approximately July 25 - August 2, 2012, various correctional
11 officers escorted Plaintiff to the medical unit and back to his cell without
12 treatment.

13
14 34. On or about August 2, 2012, Plaintiff was again taken to medical and was
15 seen by unknown medical staff.

16
17 35. On August 2, 2012, Plaintiff was taken to the hospital where he remained for
18 an extended period of time to treat the botulism.

19
20 36. Plaintiff used the administrative grievance system to complain about the lack
21 of adequate medical care. Plaintiff's requests for remedies were denied by
22 Defendants Caron Grant and Ryan.

23
24 37. Defendant Pinson attempted to interfere with Plaintiff's administrative
25 grievance process by giving incorrect information to Plaintiff, and by
26 directing Plaintiff's grievance documents to the wrong authority.

38. Defendant Ryan falsely stated that Plaintiff admitted to drinking hooch, that

1 Plaintiff's delay in admitting to drinking hooch was the cause of the delay in
2 medical treatment, and that Plaintiff was completely recovered by October
3 23, 2012.
4

5 **COUNT I - Gross Negligence**

6 39. Plaintiff incorporates all previous paragraphs herein by reference.
7

8 40. Plaintiff asserts that Defendants, one or more, had a duty to ensure that the
9 food given to ADC inmates is safe to eat.

10 41. ADC's food was unsafe to eat and contaminated with botulism toxin.
11

12 42. All food consumed by ADC inmates is provided by ADC.

13 43. Therefore, Plaintiff asserts that under the doctrine of *res ipsa loquitur*, ADC
14 must have breached its duty.
15

16 44. Plaintiff states that he was injured by contracting botulism poisoning.

17 45. Plaintiff states that this breach was the actual and proximate cause of his
18 injuries.
19

20 46. Defendants were grossly negligent in failing to provide timely treatment for
21 the serious condition.
22

23 **COUNT II - DELIBERATE INDIFFERENCE**

24 47. Plaintiff incorporates all previous paragraphs herein by reference.

25 48. Defendants are liable under the Eighth and Fourteenth Amendments to the U.S.
26 Constitution for failure to adequately train ADC employees. Specifically, the

1 Defendants have a custom or policy of deliberate indifference in regards to the
2 medical needs of citizens that are in the care, custody, and control of ADC.

3
4 49. Defendants' training procedure is not adequate to recognize obvious medical
5 needs of inmates.

6 50. Defendants were aware that Plaintiff had a serious health problem.

7
8 51. Plaintiff alerted Defendants to his health problem via Plaintiff's HNRs, as well as
9 verbal complaints made by Plaintiff directly to various Defendants.

10 52. Other inmates repeatedly tried to get the Defendants' attention. They screamed,
11 banged on their cell doors, and otherwise asked the officers for assistance for
12 Plaintiff and the other ill inmates.

13
14 53. All Defendants who saw Plaintiff or read his HNRs and grievances between July
15 25 and August 2, 2012 knew or should have known that Plaintiff required urgent
16 medical care.

17
18 54. All Defendants who saw Plaintiff or read his HNRs and grievances between July
19 25 and August 2, 2012 knew or should have known that Plaintiff needed to see a
20 licensed physician capable of conducting an appropriate differential diagnosis.

21
22 55. In accordance with their custom and policy, Defendants ignored Plaintiff and the
23 other inmates' pleas for help.

24 56. In fact several Defendants called Plaintiff names and accused him of malingering,
25 and consuming contraband.
26

1 57. Plaintiff states that these customs and policies were in violation of the Eighth
2 Amendment right to be free from cruel and unusual punishment. *Estelle v.*
3 *Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285 (1976).
4

5 58. As a result of Defendants' deliberate indifference, he suffered from the effects of
6 the toxin longer than necessary, feared for his life, and will continue to suffer
7 physical and emotional effects longer into the future than if he had received
8 proper medical care.
9

10 WHEREFORE, Plaintiff prays for relief as follows

- 11 1. For actual damages, in an amount to be determined at trial,
12 2. For compensatory damages, in an amount to be determined at trial,
13 3. For punitive damages, in an amount to be determined at trial,
14 4. For attorney's fees and costs, and
15 5. Awarding such other and further relief as the Court deems just and
16 proper under the circumstances.
17
18
19

20 DATED this 20th day of SEP/10/1309, 2013.

21 WEEKS LAW FIRM PLLC
22
23

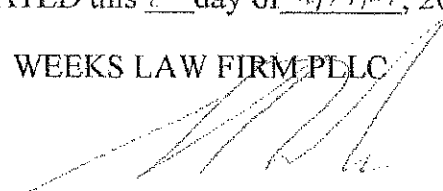
24 
25 Stephen M. Weeks, Esq.
26 Attorneys for Plaintiff

EXHIBIT C

Montijo v. Ryan, et al.
Case No. C20134044 (Pima County Superior Court)

INDEX OF STATE COURT FILINGS

No.	Date Filed	Description of Filing
1	07/22/13	Complaint
2	07/22/13	Certificate of Compulsory Arbitration
3	09/20/13	First Amended Complaint
4	09/30/13	Civil Summons to Defendant Ryan
5	09/30/13	Civil Summons to Defendant Suarez

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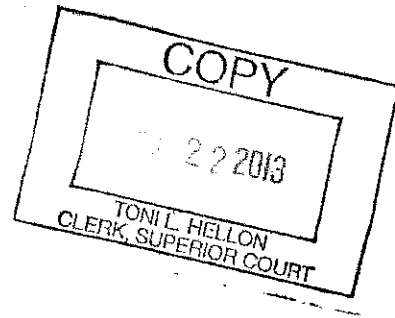
EXHIBIT C

ATTACHMENT 1

SEE EXHIBIT A

ATTACHMENT 1

ATTACHMENT 2



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3 Tucson, AZ 85719
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6 weeks@weekslegal.com
7 Stephen M. Weeks, SBN 020726
8 Attorneys for Plaintiff

9
10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE DISTRICT OF ARIZONA**

13 Enrique Montijo, an individual,
14
15 Plaintiff,

CASE NO. **C20134044**

16 vs.

17 DIRECTOR Charles Ryan; John and
18 Jane Does 1-20, in their individual and
19 official capacities; ABC companies 1-
20 10,

**CERTIFICATE OF COMPULSORY
ARBITRATION**

21 Defendants.

HON.

Christopher P. Staring

22 The undersigned certifies that he knows the dollar limits and any other
23 limitations set forth by the local rules of practice for the applicable superior court,
24 and further certifies that this case *is not* subject to compulsory arbitration, as
25 provided by Rules 72 through 76 of the Arizona Rules of Civil Procedure.

26 DATED this 22nd day of July, 2013.

WEEKS LAW FIRM PLLC

Stephen M. Weeks
Attorneys for Plaintiff

ATTACHMENT 3

SEE EXHIBIT B

ATTACHMENT 4

ARIZONA SUPERIOR COURT PIMA COUNTY

<p>ENRIQUE MONTIJO, an individual</p> <p>Plaintiffs,</p> <p>VS</p> <p>DIRECTOR CHARLES RYAN; John and Jane Does 1-20, in their individual and official capacities; ABC companies 1-10,</p> <p>Defendants.</p>	<p>CASE NO. C20134044</p> <p>CIVIL SUMMONS</p> <p>HON. CHRISTOPHER STARING</p>
---	--

THE STATE OF ARIZONA to the above-named **Defendant** CHARLES RYAN:

ARIZONA DEPARTMENT OF CORRECTIONS
1601 WEST JEFFERSON STREET
PHOENIX AZ 85007-3056

- I. A lawsuit has been filed against you.
- II. If you do not want a Judgment taken against you for the relief demanded in the accompanying Complaint, you must file a Response in writing in the Office of the Clerk of the Superior Court, 110 West Congress Drive, Tucson Arizona 85701, accompanied by the necessary filing fee. A copy of the Response must also be mailed to the attorney whose name appears below.
- III. The Response must be filed within **TWENTY DAYS**, exclusive of the date of service, if served within the State of Arizona, or within **THIRTY DAYS**, exclusive of the date of service, if served outside the State of Arizona.
- IV. Requests for reasonable accommodation for persons with disabilities must be made to the Court by parties at least three (3) working days in advance of a scheduled Court proceeding.
- V. This is a legal document. If you do not understand its consequences, you should seek the advice of an attorney.

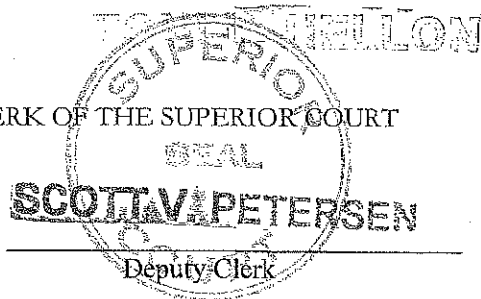
WITNESS My Hand and the Seal of the Superior Court.

DATED: _____

SEP 30 2013

CLERK OF THE SUPERIOR COURT

BY: _____



Stephen Weeks, ESQ.
Weeks Law Firm PLLC
2223 E. Speedway Blvd.
Tucson, Arizona 85719
(520) 318-1209
State Bar #020726 / PCC No. 65471
Attorney for Plaintiff

ATTACHMENT 5

ARIZONA SUPERIOR COURT PIMA COUNTY

ENRIQUE MONTIJO, an individual Plaintiffs, vs DIRECTOR CHARLES RYAN; John and Jane Does 1-20, in their individual and official capacities; ABC companies 1-10, Defendants.	CASE NO. C20134044 CIVIL SUMMONS HON. CHRISTOPHER STARING
--	---

THE STATE OF ARIZONA to the above-named **Defendant** COIII SUAREZ, BADGE NO 1770:

ARIZONA DEPARTMENT OF CORRECTIONS
ASPC/EYMAN COMPLEX-SMU1
1305 E BUTTE
FLORENCE AZ 85132

- I. A lawsuit has been filed against you.
- II. If you do not want a Judgment taken against you for the relief demanded in the accompanying Complaint, you must file a Response in writing in the Office of the Clerk of the Superior Court, 110 West Congress Drive, Tucson Arizona 85701, accompanied by the necessary filing fee. A copy of the Response must also be mailed to the attorney whose name appears below.
- III. The Response must be filed within **TWENTY DAYS**, exclusive of the date of service, if served within the State of Arizona, or within **THIRTY DAYS**, exclusive of the date of service, if served outside the State of Arizona.
- IV. Requests for reasonable accommodation for persons with disabilities must be made to the Court by parties at least three (3) working days in advance of a scheduled Court proceeding.
- V. This is a legal document. If you do not understand its consequences, you should seek the advice of an attorney.

WITNESS My Hand and the Seal of the Superior Court.

DATED: _____

CLERK OF THE SUPERIOR COURT

SEP 30 2013

BY: SCOTT V. PETERSEN
Deputy Clerk

Stephen Weeks, ESQ.
Weeks Law Firm PLLC
2223 E. Speedway Blvd.
Tucson, Arizona 85719
(520) 318-1209
State Bar #020726 / PCC No. 65471
Attorney for Plaintiff